

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of May 23, 2005

REMARKS/ARGUMENTS

The Examiner is thanked for the Official Action dated May 23, 2005. This amendment and request for reconsideration is intended to be fully responsive thereto.

Claim 1 was objected to because of minor informality. More specifically, the Examiner alleges that the term "assorted" is indefinite. Claim 1 has been amended to overcome this objection. No new matter has been added. Correspondingly, the specification has been amended to reflect this amendment. No new matter has been added.

The drawing Figs. 1A-3B have been amended to add previously omitted reference numerals 15, 25 and 35 marking openings in the low, medium and high pitch clave blocks 10, 20 and 30, respectively. No new matter has been added.

The specification has been amended to reflect the above amendments in Figs. 1A-3B. The antecedent basis for these amendments could be found in Figs. 1A-3B of the present application. No new matter has been added.

The specification has been further amended to specify that the bodies 12, 22 and 32 of the clave blocks 10, 20 and 30 are manufactured of any appropriate solid material. The antecedent

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of May 23, 2005

basis for these amendments could be found on page 4, line 15; page 45 lines 5 and 17; and in Figs. 1A-3B of the present application. No new matter has been added.

Claims 1-3, 5 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cohen et al. (USP 6,020,546) in view of Nutting et al. (USP 4,217,807). The applicant respectfully disagrees. However, in order to expedite the prosecution of the present application, claim 1 has been amended to recite that each clave block comprises a rigid body made of a solid material, and that an open cavity within the clave block body is defined solely by the solid material. The antecedent basis for these amendments could be found on page 4, line 15; page 45 lines 5 and 17; and in Figs. 1A-3B of the present application. No new matter has been added.

The Examiner concedes that Cohen does not disclose the set of clave blocks having assorted (different) volumes. On the other hand, Nutting fails to disclose the set of clave blocks having different volumes defined solely by the solid material of the clave blocks.

By contrast, Nutting teaches a set of stemware (goblets) partially filled with water and made to produce a sound either by tapping or by rubbing a non-oily, water-wet finger around the rim of the goblet. In other words, the musical instrument of Nutting is not a percussion musical instrument. Moreover, although some of the goblets are identical (i.e. have substantially equal exterior dimensions), such as goblets 11-14, 12-13-15-16-18-19 and 20-17, and tuned to different notes, the assortment of volumes therein is defined by a level of water in the goblet, not by the glass material thereof. As clearly disclosed by Nutting, the goblets having equal exterior

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of May 23, 2005

dimensions have equal interior volumes defined only by the glass material of the goblets.

Thus, even if the combination of and modification of Cohen and Nutting suggested by the Examiner could be made, the resulting musical instrument still would lack the set of clave blocks having different volumes defined solely by the solid material of the clave blocks.

Moreover, MPEP § 2143.01 requires that there must be some suggestion or motivation, either in the prior art references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine teachings of the prior art. However, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of the prior art. On the contrary, the block percussion instrument of Cohen is vertically downwardly supported by the eyebolt mount with the open end 16 facing downward, as shown in Fig. 3 of Cohen. Obviously, the block percussion instrument of Cohen cannot be filled with water, as taught by Nutting and suggested by the Examiner. Thus, the teachings of Cohen and Nutting cannot be combined.

Therefore, the rejection of claims 1-3, 5 and 6 under 35 U.S.C. 103(a) is improper.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Cohen in view of Nutting as applied to claim 1 above, and further in view of Simmons et al. (6,091,009). The applicant respectfully disagrees. Claim 4

Applicant further respectfully submits that claim 4 depending upon base claim 1 and including all of the distinguishing features thereof, is not unpatentable over Cohen, Nutting and


Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of May 23, 2005

Simmons for the reasons discussed above and for the additional reason that the added subject matter of the dependent claim 4, when taken in conjunction with the features of claim 1, is neither disclosed in nor reasonably suggested by the applied prior art. Therefore, the rejection of claim 4 under 35 U.S.C. 103(a) is improper.

New claims 7 and 8 have been added.

It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Respectfully submitted:
Berenato, White & Stavish

By: 
George Ayvazov
Reg. N° 37,483

6550 Rock Spring Drive, Suite 240
Bethesda, Maryland 20817
Tel. (301) 896-0600
Fax (301) 896-0607

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of May 23, 2005

Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 1A-3B. The replacement sheets, which include Figs. 1A-3B, replace the original sheets including Figs. 1A-3B. In Figs. 1A and 1B, previously omitted reference numeral 15 marking an opening in the low pitch clave block 10 has been added. In Figs. 2A and 2B, previously omitted reference numeral 25 marking an opening in the medium pitch clave block 20 has been added. In Figs. 3A and 3B, previously omitted reference numeral 35 marking an opening in the high pitch clave block 30 has been added.

Attachments: Three Replacement Sheets